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Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi.

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Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State*

A. General observations

1. The Government of the Sudan welcomes this opportunity to respond to the draft report of the Independent Expert on the Situation of Human Rights in the Sudan, and extends its gratitude to him for sharing the draft report to comment on the his observations and finding.

2. While appreciating the efforts and engagement of the Independent Expert with the Government, Sudan makes the following observations on his draft report.

3. Concerning the essence of the mandate of the Independent Expert, which is understood to focus on the provision of technical assistance and capacity building to improve human rights in Sudan situation within the ambit of HRC Agenda Item 10, the Government observes that the current IE's report, as do the previous reports, includes no more than the call to the international community to provide such technical assistance to the Sudan in two or three paragraphs in each report. The Government expected that the Independent Expert should have made, through his successive mandates, a definite perception on any proposal on how such assistance be provided, or on the domains and priorities related thereto., despite the fact that all the entities he met during his visits to the country informed him of their needs and priorities concerning technical assistance and capacity building. Further, the Government handed to him a document of detailed programs and projects prioritized as needed for further improving human rights situation in the country. The IE's reporting methodology appears to be a mandate under Agenda Item 4, rather than under Item 10.

4. The Government also notes that many areas indicating significant improvement of human rights situation in the Sudan, and some challenges that could have been addressed, have been bypassed or ignored by the report, despite the fact that the Independent Expert has been well informed of and got in touch with. These include, inter alia, the following:

- Though the report mentioned the partial lifting of US sanctions on Sudan, it is silent of the persistent enormous negative impacts of such sanctions on the enjoyment of human rights by the Sudanese people.
- The report does not devote an adequate space to the outcome of the national dialogue and its positive impact on the political and social fields, reduction of the state of blockage and improvement of security situation throughout the country.
- The report overlooked the reflection in his report of some venues visited by the Independent Expert such as Khartoum Social City established by the Government by its own national resource, and serves as shelter for homeless and street girls and boys and vocational training center, with health, psychological and training services for children.
- The meeting with the newly established Committee of the National Human Rights Report was also neglected in the IE draft report. This is an inter-ministerial body with representatives from the parliament, judiciary, academic institutions and civil society organizations, tasked with the enhancement and sensitization of human rights mainstreaming within the State apparatus, and to report annually on human

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rights situation in the country to the Council of Ministers and the Legislature to enable them to take the suitable decisions towards further protection and promotion of human rights.

- The challenge and negative effects of foreign debt patrimony on the enjoyment of human rights, including the right to development, of which the Independent Expert had minutely been informed during his February visit, have not found the chance in the draft report. Although the Sudan has fulfilled the conditions and criteria and become qualified to exemption or relief in accordance with the HIPC initiative, Sudan still suffering under the heavy burden of such debts.

- Although the draft report devoted a space to speak about Southern Sudan refugees, it omitted the issue of refugees from other countries. Sudan hosts more than 2 million refugees of different nationalities. Many were hosted in camps, others, particularly in East Sudan, were integrated in the local community. Sudan allocated 270, 000 hectare of agricultural land to assist the refugees in their livelihood and self-reliance, in addition to small business, livestock and revolving fund.

- The IE report skipped the recommendations to the armed groups, as used to do in the previous reports. In the present report the armed groups were substituted for UNAMID. Although the mandate of UNAMID is confined to the 5 states of Darfur and to the provisions of the relevant UNSC resolutions, the recommendation in paragraph 88 (a) of the report called on UNAMID to provide human rights training and support to judicial and non-governmental institutions **across** the Sudan.

- Though the draft report mentioned the 2016 amendments to the Interim Constitution, it didn't refer to the amendments of April of 2017. Such amendments, which were introduced to further enhance human rights and freedoms, involved article 15 (1) of the Interim Constitution; marriage and family welfare; article 28 the right to life; article 29 the right of freedom; article 30 prohibition of slavery and forced labor; article 31 equality before the law and eligibility to public posts; article 37 sanctity of privacy; article 38 freedom of conscience, worship and ideology; article 39 freedom of speech and information and article 40 freedom of alliance, assembly and association.

- The 2017 amendments also covered constitutional provisions of article 151 of the Interim Constitution pertaining to NISS. Paragraph (2) of the new article provides that: "*The National Security Service shall be professional and its mandate shall focus on information gathering, analysis and advice to the appropriate authorities*". Paragraph (4) of the same article provides that NISS shall make reports and present oral statements before the National Assembly, and Paragraph (7) provides that NISS's courts and accountability of its members shall be regulated by law.

B. Comments on the draft report by paragraphs

Paragraph 12

5. The assumption by some political opponents that the national dialogue was not inclusive defies the truth and runs against reality. Prior to the dialogue kick off the Government had exerted all the efforts to make conducive the atmosphere for the dialogue in accordance with the terms agreed upon in the road map, and no condition was stipulated for participation in the dialogue. The fact that some political parties or activists boycotted the dialogue does not negate its inclusiveness.

Paragraphs 22 & 23

6. Dr. Mudawi, who has no organization registered in Sudan as indicated in para. 22, and Mr. Hafiz Idriss have been accused of committing specific offences under the national Criminal Act 1991 and are now under trial before the competent court. The first court sitting, which was attended by dozens of Sudanese prominent lawyers representing defense on behalf of the two accused and a considerable number of representatives of civil society and diplomatic community in Khartoum, took place on 14 June 2019. During their detention, the accused were availed regular access to their families, lawyers and the necessary medical care. The assumption that the two persons are being held solely for their legitimate work on protecting and promoting human rights in Sudan is a pre-judgment and contradict with the established reasonable prima facie evidence that stand against them.

7. Since the two accused are facing charges and are being tried before a court of law within the framework of an independent judicial system, we respectfully assert that the Independent Expert is not in a position to prescribe a specific action concerning the accused, nor he is mandated to interfere in the legal jurisdiction of a State.

Paragraph 25

8. The state of emergency is imposed only upon the occurrence of an imminent danger such as war, invasion, blockade, natural disaster…etc. The imposition of state of emergency is subject to the provisions of articles 210 – 212 of the National Interim Constitution. The declaration of a state of emergency shall be submitted to the National Legislature within fifteen days of the issuance thereof. The duration of the measures relating to the state of emergency shall expire on lapse of thirty days as from the date of issuance of the declaration if the National Legislature does not approve by a resolution the extension of its duration, or lapse of the duration approved by the National Legislature.

9. Article 2011 of the Constitution provides that the President of the Republic may during the state of emergency take, by virtue of law or exceptional order any measures that shall not derogate from the provisions of this Constitution, with a few exceptions, including by suspension of part of the Bill of Rights. However, there shall be no infringement on the right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial.

10. The state of emergency in Sudan has been imposed in only certain parts of the country which witness armed conflict; namely Darfur, Blue Nile and South Kordofan. The imposition is in compliance with the above mentioned constitutional provisions. Section 6 (1) of the Emergency and Public Safety Act 1997 provides that the provisions of the Criminal Act 1991 shall be applied to acts committed in contravention to this Act (i.e. Emergency and Public Safety Act), and to the regulations and orders made pursuant thereto.

11. Since the special courts and public prosecution offices which the Emergency Act provides that they may be established have not actually been set up, the procedures are normally assumed by ordinary courts and prosecution offices, and hence the procedures prescribed in the Criminal Procedures Act 1991 apply, and all the processes made in accordance with the emergency regulations are made under supervision of the competent judicial institutions. The Government is not desirous of prolonging the state of emergency in these areas as long as predominant peace and stability are restored, a matter that looks to be fully achieved very soon.

Paragraphs 26 & 27

12. Mr. Adam Abdulbari was accused and arrested for definite charges under the national criminal law, and not by reason of his work with UNAMID as indicated in the IE report. There are more than 2900 Sudanese nationals working as local staff with UNAMID,

a fact that proves that working with UNAMID or any other international or regional entity recognized by the State does not per se constitute a ground for accountability. The charges attributed to Mr. Abdulbari has nothing to do with any acts performed by him in his official capacity as a UNAMID member of the local staff, and so there is no any non-abidance by the provisions of the SOFA agreement signed by the Sudan and the UN/AU.

Paragraphs 28 & 29

13. It is regrettable that the report expresses the perception that attacks and arrests are targeted against "*Darfuri*" students. Such an utterance, notably when made by an international official, could entice sedition amongst people of a unified nation, in circumstances where almost the whole are convinced of the necessity for sustainable peace and stability in the country. All Sudanese nationals are equal before the law, and no group is targeted or discriminated against by reason of race, ethnicity, geographical affiliation or religion. It a principle enshrined in the Constitution and applied on the ground.

14. The allegation that the National Security Service raided on 27 January 2017 a student dormitory in Um Badda district is totally untrue. There is no any official record that documents such an incident.

15. Concerning the incidents of the University of Holy Quran in El Gazira state in March 2017, the police forces interfered to disperse the riot made by students, who set fire to the University's administrative compound causing property losses estimated at 500 thousand Pounds, and then took to the street violently targeting vehicles and public and private property. The ostensible cause of the riot was the revocation of exemption on university fees, the term of which expired in accordance with the Doha Document, and a decision to that effect was issued by the higher education authority. Though the University administration tried with the protesting students to settle the matter by facilitating payment of fees on easy installments, they refused the proposal and acted as described above.

16. In the aftermaths of the said incidents the police arrested the students who were identified to cause the damage, and criminal proceedings were initiated against them under section 67 of the Criminal Act 1991. The case was later on referred for trial. In Al Azhari University, there was no any interference by NISS or the police force on the date mentioned in the report (15 May 2017). The fact was that some students organized a strike inside the university campus preventing the rest of students of entering the campus. The university guard unit reported the matter to the police, who initiated criminal proceedings agents 20 students for charges relating to breach of public order. The proceedings were submitted to the court for trial, which summarily considered the case and issued a decision dismissing the case for lack of sufficient evidence. We submit that it is necessary to apply the criteria for distinction between a riot rampage that causes damage and sabotage and a lawful and peaceful gathering.

Paragraphs 30 & 31

17. In performing its duty under the urban development and planning strategy, the Physical Planning Authority of Khartoum state carried out a campaign in May 2017 to remove irregularly and randomly constructed buildings in Soba Aradi area. The operation claimed a number of shops, dwellings, schools and worship premises. Amongst the buildings demolished there were 2 of them used as churches and 19 others used for Muslim worship with the following detail:

- 2 mosques and 1 zawya (small Muslim prayer structure) in Block 8 Soba Aradi.
- 1 mosque in Block 7 Soba Aradi.
- 1 mosque and 2 zawyas in Block 5 Soba Aradi.

- 1 mosque and 1 zawya in Block 4 Soba Aradi.
- 1 mosque and 1 zawya in Block 12 Soba Aradi.
- 1 mosque in Block 1 Soba Aradi.
- 1 mosque in Block 2 Soba Aradi.
- 1 mosque and 2 zawyas in Block 9 Soba Aradi

.18 The report did mention names of religious leaders who were claimed to be intimidated or arrested. If the assumption refers to the two pastors who were released on 11 May 2017, they were not arrested or prosecuted by reason of their religious believes or activities. There were definite charges stood against them under the criminal law of the nation, which had been substantiated by evidence before a court of law for which all guarantees of fair trial had been realized.

Paragraphs 31 - 33

19. Since the issuance of an order by the President of the Republic in 15 January 2013, pre-publication censorship of newspapers ceased to exit. There are more than 30 daily newspapers published regularly in the Sudan. It seems that Mr. Nononsi was not used to look through local newspapers during his Sudan missions to touch on the extent of criticism and attack on the Government in order to judge whether there is freedom of expression or not. There is no red line prescribed by the authorities, but no freedom is absolute in a manner that encroaches upon other rights and violates the law, a principle recognized by the ICCPR.

20. There are thousands of internet sites and blogs which launch huge opposition campaigns against the Government, and there is no any measure taken by the Government to block or interfere with such sites. Social media are freely working throughout the country without any hindrance, a matter which rarely exits in the region. Sudan promulgated the Right to Information Act in January 2016 in compatibility with the Model Law for African States on Access to Information issued by the African Commission on Human and People Rights. The Press and Publication Act was one of the legislations reviewed by the Law Reform Committees, and is currently under the legislative process.

Paragraphs 34 & 35

21. In respect of the Sudan report on the status implementation of the recommendations made by the Independent Expert to the Government in his previous report, which was submitted in May 2017, we would like to indicate that this status report directly addressed the 5 recommendations of IE previous report, which has not specifically referred to the events of September 2013.

22. However, the process of compensation of victims and their families has completed by the committees assigned with this task. The total sum of compensation has been allocated the Ministry of Finance and deposited in a special account. Families of 50 deceased persons received the compensation, 20 others are under the process of receiving and concerning the 10 families who refused compensation and preferred to proceed with the cases, the proceedings are ongoing under investigation and prosecution, bearing in mind that 2 cases have already submitted for trial before the competent court.

Paragraphs 38 – 47

23. Sudan shares the Independent Expert the view that hostility has significantly decreased in Darfur. While the Decisive Summer Operation is a factor for causing such reduction, other important aspects are the main elements in restoring stability. These include the outcome of the national dialogue which manifested the Government's will of

achieving peace and reconciliation, the preparedness to go on with negotiations with those are yet to join the peace process and the efforts taken by the Government in facilitating humanitarian work.

24. With regard to the investigation and prosecution in Darfur, during the period between January and 31st 2016 to June 2016 the number of cases under investigation reported to and assumed by the Office of the Prosecutor-General for the Special Court in Darfur was 261, and 47 cases were referred for trail: 39 were decided on and 8 are pending at the appeal stage, the total number of cases is 336. Those included, inter alia, charges of murder, armed robbery and rape. The number of suspects under police custody is 276, of whom 53 are under trial. The suspects include military and security personnel, border guards, rebellions and civilians.

25. The 9 incidents of rape claimed to be committed in Sortoni IDPs camp have not been reported to Public Prosecutor or to the police by the UNAMID nor by any other body. It is preferable when speaking about instances of violation to rely on credible information and concrete evidence.

26. With regard to the working visas for UNAMID personnel, most of the applications for visas during the year 2017 were accepted, and in 2017 there are 5 applications pending under process. It is a generally recognized practice that visas for UNAMID junior staff are renewable for six months, while those for senior official, such as the head of mission, his deputy and head of Khartoum office are renewable for 12 months.

Paragraphs 49

27. The internally displaced persons in Azaza IDPs camps benefit of the basic services provided to the local communities. In order to further improve the provision of services, the state government has recently signed an agreement with UNICEF and some voluntary organizations to conduct a swift survey for the estimation of needs in the camp, and then to interfere on the basis of the survey results. HAC and other relevant agencies are fully ready to assist IDPs returning home, whenever the situation improves.

Paragraphs 51

28. The Sudanese Armed Forces (SAF) are strictly committed to respect the declaration of ceasefire which was repeatedly extended by the President of the Republic, in South Kordofan and the other armed conflict areas. SAF only act in self defense in respond any attack initiated by the rebel groups.

Paragraphs 53 – 55

29. Sudan has remained to host influx of refugees from South Sudan since the ignition of the armed conflict in that country. The actual number of Southern Sudan refugees is estimated at more than million persons. Despite this huge number, the contribution of international community is weak and below the ambition, constituting only 20%, while the crises with its economic, social and security dimensions overweighs the capability of Sudanese State. Due to this issue, Sudan pays exorbitant price in many aspects such as environment deterioration and overload pressure on services, including water, health, infrastructure and security problems.

30. The influx of Southern Sudan refugees has extended to all five states of the Sudan, in addition to those who were unable to return home after secession of the South in 2011. Sudan established 14 camps and entry centers in the five states adjacent to South Sudan. Large numbers of refugees live in various Sudanese cities, particularly the capital Khartoum. Sudan is striving hard to provide basic services in the refugee camps in collaboration with UNHCR and some other partners.

Paragraphs 56 - 59

31. The issue of human trafficking is an international phenomenon and Sudan should not be left bear alone the responsibility to address it. Sudan has vast borders extending to about 6000 kilometer with only 20 control stations with inadequate equipments, bearing in mind the insufficient international technical assistance and the impact of the UCMs imposed on the country during the last two decades.

32. It is true that the word "exploitation" is not defined in the Anti- Trafficking Act 2014. However the Sudan ratified Palermo Protocol in 2004, and this Protocol attempted to define this term in article 6 (a). The Protocol is deemed as part of the national Constitution, pursuant to Article 27 (3) of the Interim Constitution of the Republic of the Sudan. Further the lawmakers safeguarded to specify a definition for the term, as there might occur future development in the definition in accordance with the international norms.

33. Sudan's efforts in combating human trafficking using its limited resources could not be ignored. These efforts includes development of policies and legal framework, coordination and engagement with neighboring countries and relevant partners and organizing regional and international initiatives related to trafficking, such as hosting the regional conference on human trafficking and smuggling in the Horn of Africa in October 2014, which resulted in the issuance of Khartoum Process.

34. The Government's efforts in pursuing traffickers and rescuing protecting victims are incessant. A lot of operations performed by the security forces resulted in the arrest of many traffickers and release of large numbers of victims held as hostages. The very latest operation took place in Wadal Hilaiw in Kasala East Sudan on 11 July 2017, leading to the arrest of 7 traffickers and release of 71 victims held by them.

Paragraphs 60 - 62

35. The austerity measures announced by the Government in November 2016 were ordinary actions that are usually taken by any State to improve performance of its economy, especially when such State is one of the underdeveloped and more significantly when it is encountered by imposed unilateral coercive measures. However the measures announced by the Government of the Sudan simultaneously include mitigating elements to relieve the burden on individuals, especially the poor. The Government sponsored a package of projects and programs which include, inter alia:

- The rural women project, benefiting 45 000 families.
- The national health insurance was increased to 42%.
- Adoption and implementation of the comprehensive program of social security for all the states, which includes the fields of livelihood, health, water and education.
- Adoption and implementation of the direct cash support program targeting 50 000 families.
- Implementation of the World Bank started, January 2017, for supporting and improving implementation the Social Safety Net Projects.
- Enhancing and sponsoring corporate social responsibility programs targeting the development of local community.
- Intensifying the efforts to promote coordination of poverty reduction programs.
- Development of a package of social policies such as the national policy for addressing the problem of homelessness and the national policies for persons with disabilities and the elderly.

36. Sudan adopts a decentralized system of government with a national government and 18 states governments. There is the national Ministry of Health which undertake the general health policy, and 18 regional ministries of health in the states which bear the responsibility of providing and facilitating health services. The apparently inadequate percentage allocated to health, as mentioned in the draft report, is the portion of the national Ministry of Health, while the state ministries of health enjoy their own budgets which are relatively reasonable in the circumstances of the country available resources.

Paragraphs 64 – 69

37. The currently ongoing legal reform process mentioned in the draft report has in its priority the review of domestic legislations in a view of harmonizing them with the constitution and internationsl and regional instruments ratified by the Sudan, in particular human rights instruments. The Committees tasked with the reform process completed their work and submitted their reports and recommendations to the Minister of Justice, who submitted the same to the Cabinet in the forms of Bills of law to be passed by the National Legislature.

38. The reason for the delay of the process is the workload of Parliament in the current period which addresses the legislative accommodation to the outcome of the national dialogue, that required a range of legislative (constitutional and legal) and executive measures paving the way for the national reconciliation government, and the arrangements for the adoption of the new permanent constitution. Further, the legislations that need amendment are plenty, and require a period of time.

39. Concerning ratification of human rights instruments, and in addition to the five core instruments ratified by the State, Sudan accepted the UPR recommendations to ratify 5 human rights instruments, including CAT and the International Convention for the Protection of all Persons from Enforced Disappearance. Even in respect of the recommendations to ratify CEDAW, which have been noted by the Sudan during the UPR review, there are ongoing national efforts and wide consultations between different components of society to pursue those who oppose ratification of such convention of the necessity to accede thereto. Sudan made a pledge to that effect in the UPR Working Group Report (A/HRC/33/8/Add.1).

40. However, domestication of the ratified human rights instruments in national laws, though important, is not as critical as it might be seen, since all the rights and freedoms embodied in those instruments are self enforceable by the national courts. Article 27 (3) of the Interim Constitution provides that "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill".

Paragraphs 70 – 76

41. The establishment of the modern Sudanese judicial system refers back to the year 1899, based on the common law principles which assure independence of the judiciary and the rule of law. Equality before the and subjection of the State organs to the law and jurisdiction of the courts is a fundamental principle provided for in the Interim Constitution and the Interpretation of Laws and General Clauses Act 1974, and constantly applied by the courts of law.

42. Designation of a specific set of courts to consider certain types of offences of serious nature is not intended to discriminate between litigants and accused persons in appearing before justice. The grave impact of such offences on the community, besides the need to allocate specialized judicial staff capable of efficiently and fairly assuming the proceedings of such offences, are the rational for establishment of specialized courts.

43. There is no "Criminal Court for Serious Crimes" exists in such general sense, as mentioned in paragraph 72 of the II draft report. There are certain specialized courts established by virtue of provisions in some legislations such as the Anti Terrorism Act, Combat of Human Trafficking Act and the Child Act. These are specialized courts whose judicial and paralegal staff are qualified and trained in the relevant fields, which are usually governed by international and regional obligations under instruments ratified by the State, in addition to the domestic law.

44. The establishment of special courts and prosecution offices under the Emergency and Public Safety Act 1997 is not mandatory. Section 6 (1) of this Act provides: *"The Chief Justice ...**may** establish...etc.*. Such courts, when established, are concerned with laws, orders and measures under the Emergency Act, as demonstrated in paragraphs 8 - 11 above.

45. The Constitutional Court is a judicial institution separate and independent of the Judiciary. It is the custodian of the Constitution and the highest body competent to protect human rights and fundamental freedoms, including by considering challenges against judicial decisions made by the courts of the Judiciary, where the challenge to the decision involves constitutional or human rights violation.

46. The separation of the office of the Attorney General from the Executive, which commended by the draft report, is a further step in further enhancement to the independence of the judicial functions, notably in the field of criminal justice and access to justice. On the other hand, the procedural immunities granted to certain officials have never stood as hindrance against accountability or prosecution of any official whenever there arises genuine suspicion that such official has committed an offence or perpetuated a human right violation.

Paragraphs 77 - 81

47. The National Commission for Human Rights assumes its mandate and functions as prescribed in the Constitution and the law. The chairperson, deputy chairperson and the secretary general of the Commission have recently been appointed. This appointment actually reflected diversity, as the Chairperson is a lady and the Deputy Chairperson is Christian. The outcome of the national dialogue devoted a considerable attention in respect of reinforcing the Commission, and the measures for implementing such recommendations.